

# Senate File 2113 - Introduced

SENATE FILE 2113

BY JOCHUM

## A BILL FOR

1 An Act modifying provisions relating to franchises for the  
2 provision of cable service or video service, and including  
3 effective date and retroactive applicability provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 476.55, subsection 2, Code 2009, is  
2 amended by striking the subsection.

3 Sec. 2. Section 477A.2, subsection 4, Code 2009, is amended  
4 to read as follows:

5 4. A competitive cable service provider or competitive  
6 video service provider shall provide at least thirty days'  
7 notice to each municipality with authority to grant a franchise  
8 in the service area, and to the incumbent cable provider, in  
9 which the competitive cable service provider or competitive  
10 video service provider is granted authority to provide service  
11 under a certificate of franchise authority that the competitive  
12 cable service provider or competitive video service provider  
13 will offer cable services or video services within the  
14 jurisdiction of the municipality, and shall not provide service  
15 without having provided such thirty days' notice. A copy of  
16 the notice shall be filed with the board on the date that the  
17 notice is provided.

18 Sec. 3. Section 477A.3, Code 2009, is amended to read as  
19 follows:

20 **477A.3 Application requirements — certificate of franchise**  
21 **authority.**

22 1. The board shall issue a certificate of franchise  
23 authority under this chapter within ~~fifteen~~ thirty business  
24 days after receipt of a completed application and affidavit  
25 submitted by the applicant and signed by an officer or general  
26 partner of the applicant. The application and affidavit shall  
27 provide all of the following information:

28 a. That the applicant has filed or will timely file with  
29 the federal communications commission all forms required by  
30 the commission in advance of offering cable service or video  
31 service in this state.

32 b. That the applicant agrees to comply with all applicable  
33 federal and state statutes, regulations, and rules.

34 c. That the applicant agrees to comply with all applicable  
35 state laws and nondiscriminatory municipal ordinances and

1 regulations regarding the use and occupation of a public  
2 right-of-way in the delivery of the cable service or video  
3 service, to the extent consistent with this chapter, including  
4 the police powers of the municipalities in which the service  
5 is delivered.

6     *d.* A description of the service area to be served and the  
7 municipalities to be served by the applicant which may include  
8 certain designations of unincorporated areas. This description  
9 shall be updated by the applicant prior to the expansion of  
10 cable service or video service to a previously undesignated  
11 service area and, upon such expansion, notice shall be given to  
12 the board of the service area to be served by the applicant.

13     *e.* The address of the applicant's principal place of  
14 business and the names of the applicant's principal executive  
15 officers.

16     *f.* Documentation that the applicant possesses sufficient  
17 managerial, technical, and financial capability to provide the  
18 cable service or video service proposed in the service area.

19     *g.* Copies of advertisements or news releases announcing the  
20 applicant's intent to provide cable service or video service  
21 in the service area intended for release if the certificate of  
22 franchise authority is granted.

23     *h.* A date certain by which the cable system or video service  
24 network shall commence operation.

25     2. The failure of the board to notify the applicant  
26 of the completeness of the applicant's affidavit or  
27 issue a certificate of franchise authority before the  
28 ~~fifteenth~~ thirtieth business day after receipt of a completed  
29 affidavit shall constitute issuance of the certificate of  
30 franchise authority applied for by the applicant without  
31 further action by the applicant.

32     3. The certificate of franchise authority issued by the  
33 board shall contain all of the following:

34     *a.* A grant of authority to provide cable service or video  
35 service in the service area designated in the application.

1     *b.* A grant of authority to use and occupy the public  
2 right-of-way in the delivery of cable service or video service,  
3 subject to the laws of this state, including the police powers  
4 of the municipalities in which the service is delivered.

5     *c.* A statement that the grant of authority provided by the  
6 certificate is subject to the lawful operation of the cable  
7 service or video service by the applicant or the applicant's  
8 successor.

9     *d.* A statement that the franchise is for a term of ten  
10 years, is renewable under the terms of this section, and is  
11 nonexclusive.

12     *e.* Such other conditions, restrictions, or requirements as  
13 deemed necessary or appropriate by the board after review of  
14 the application and affidavit submitted pursuant to subsection  
15 1.

16     4. A certificate of franchise authority issued by the  
17 board is fully transferable to any successor of the applicant  
18 to which the certificate was initially issued. A notice of  
19 transfer shall be filed by the holder of the certificate  
20 of franchise authority with the board and the affected  
21 municipality and shall be effective fourteen business days  
22 after submission. The notice of transfer shall include the  
23 address of the successor's principal place of business and  
24 the names of the successor's principal executive officers.  
25 The successor shall assume all regulatory rights and  
26 responsibilities of the holder of the certificate. Neither  
27 the board nor an affected municipality shall have authority to  
28 review or require approval of such transfer.

29     5. The certificate of franchise authority issued by the  
30 board may be terminated by a person providing cable service or  
31 video service by submitting written notice to the board and  
32 any affected municipality. Neither the board nor an affected  
33 municipality shall have authority to review or require approval  
34 of such termination.

35     6. *a.* A holder of a certificate of franchise authority

1 shall provide status reports to the board every three months  
2 regarding progress toward completion of construction and  
3 commencement of operation of the cable system or video service  
4 network. The status reports shall be required during the  
5 period beginning with issuance of the certificate of franchise  
6 authority and ending on the date that construction is completed  
7 and operation commences.

8 b. If a holder of a certificate of franchise authority fails  
9 to complete construction and commence operation of a cable  
10 system or video service network by the date specified in the  
11 application and affidavit submitted pursuant to subsection  
12 1, or two years from the date of issuance for a certificate  
13 of franchise authority issued prior to the effective date of  
14 this Act, or if any conditions, restrictions, or requirements  
15 included in the certificate by the board are not adhered to,  
16 the board may revoke the certificate of franchise authority,  
17 and the franchise agreement in effect between an incumbent  
18 cable provider wishing to reinstate the franchise agreement  
19 and the municipality prior to issuance of the certificate of  
20 franchise authority shall be reinstated.

21 ~~6.~~ 7. a. The board shall only have the authorization to  
22 issue a certificate of franchise authority as provided in this  
23 section, and shall not impose any additional requirements or  
24 regulations upon an applicant.

25 b. The board may assess a holder of a certificate of  
26 franchise authority for the costs incurred by the board during  
27 review of the application and affidavit submitted pursuant to  
28 subsection 1, and any additional costs incurred resulting from  
29 a contested case proceeding requested pursuant to chapter 17A.

30 Sec. 4. Section 477A.8, subsection 2, Code 2009, is amended  
31 to read as follows:

32 2. The holder of a certificate of franchise authority  
33 shall implement an informal process for handling inquiries  
34 from municipalities and customers concerning billing events,  
35 service issues, and other complaints. If an issue is not

1 resolved through this informal process, a municipality ~~may~~  
2 ~~request a confidential nonbinding mediation with the holder of~~  
3 ~~a certificate of franchise authority, with the costs of such~~  
4 ~~mediation to be shared equally between the municipality and the~~  
5 ~~holder of a certificate of franchise authority or a customer~~  
6 may, as an exclusive and final remedy, request a confidential  
7 binding arbitration by an arbitrator selected by the parties,  
8 with the costs of arbitration assessed as determined by the  
9 arbitrator.

10 Sec. 5. Section 477A.8, Code 2009, is amended by adding the  
11 following new subsection:

12 NEW SUBSECTION. 3. The board shall compile and maintain on  
13 its internet site in an easy-to-read format a chart providing a  
14 comparison of costs and services provided for every provider of  
15 cable service and video service in this state. The information  
16 shall include the name, address, telephone number, and internet  
17 site address for each provider and each provider's parent  
18 company, if applicable; and available service packages, the  
19 cost of each service package, and any other information deemed  
20 appropriate or significant by the board.

21 Sec. 6. Section 477A.10, subsection 3, Code 2009, is amended  
22 by striking the subsection and inserting in lieu thereof the  
23 following:

24 3. A cable service provider or video service provider  
25 operating under a certificate of franchise authority that is  
26 using a cable system to provide cable services or that is using  
27 telecommunication facilities to provide video services shall,  
28 commencing five years after initially obtaining a certificate  
29 of franchise authority, and every three years thereafter,  
30 increase by twenty percent the number of households in any  
31 municipality in its franchise service area to which it offers  
32 cable service or video service by the beginning of the next  
33 three-year period, if it has in the preceding three-year period  
34 offered cable service or video service to at least fifteen  
35 percent of the households in the municipality, until such

1 cable service provider or video service provider is capable of  
2 providing cable service or video service to all households in  
3 the municipality.

4 Sec. 7. Section 477A.10, Code 2009, is amended by adding the  
5 following new subsection:

6 NEW SUBSECTION. 4. A cable service provider or video  
7 service provider shall not engage in unlawful discrimination in  
8 relation to the establishment of rates.

9 a. A cable service provider or video service provider shall  
10 be prohibited from subsidizing its lower rate offerings with  
11 rates paid by customers in higher rate exchange areas. Any  
12 person who provides cable service pursuant to a franchise  
13 granted under this chapter shall be prohibited from selling  
14 such service or a bundle of services that includes cable  
15 service or video service at a price that is more than two  
16 hundred percent of the lowest price that provider charges for  
17 a functionally equivalent service or bundle of services to  
18 another customer in this state. A cable service provider or  
19 video service provider that offers a price to a customer in the  
20 franchised area in violation of this subsection shall be deemed  
21 to have engaged in predatory pricing. If the lowest price  
22 meets a bona fide price offered to a customer in the franchised  
23 area by an unrelated or unaffiliated competitor, such price  
24 shall not be used to determine a violation of this subsection.

25 b. A cable service provider or video service provider  
26 found by a court of competent jurisdiction to have failed to  
27 materially comply with this subsection shall be subject to the  
28 following:

29 (1) An injunction ordering compliance with this subsection.

30 (2) For each franchised area in which a violation occurs, a  
31 civil penalty in an amount not exceeding ten thousand dollars.

32 c. If the court finds that the noncompliance with this  
33 subsection has resulted in a loss of customers to a competitive  
34 provider, the injured provider may bring a civil action  
35 on behalf of the customer or customers seeking recovery of

1 damages.

2     *d.* If the court finds that noncompliance with this  
3 subsection has resulted in a loss of customers to a competitive  
4 cable service provider or competitive video service provider,  
5 the injured competitive cable service provider or competitive  
6 video service provider may bring a civil action to recover the  
7 consequential damages of economic loss suffered by the injured  
8 provider as a result of the loss of customers who changed to a  
9 noncompliant competitive cable service provider or noncompliant  
10 competitive video service provider while that noncompliant  
11 provider was in violation of this subsection.

12     Sec. 8. NEW SECTION. 477A.11A Consumer protection study —  
13 annual report.

14     The office of consumer advocate shall conduct an assessment  
15 of the consumer impact of this chapter. The assessment shall  
16 include but not be limited to the number and nature of consumer  
17 complaints received by the office of consumer advocate, the  
18 office of the attorney general, and other agencies or political  
19 subdivisions; an analysis of the impact on competition in the  
20 provision of cable service and video service across the state;  
21 and conclusions regarding impact on rates or pricing for the  
22 provision of cable service and video service. The office of  
23 consumer advocate shall solicit public input in conducting  
24 the assessment. The assessment shall include recommendations  
25 for changes in this chapter which would benefit consumers.  
26 The first assessment shall be provided to the members of  
27 the general assembly by January 1, 2011, with subsequent  
28 assessments provided by January 1 annually through January 1,  
29 2014.

30     Sec. 9. NEW SECTION. 551.1A Unfair discrimination in local  
31 exchange rates.

32     1. A telecommunications provider holding a certificate  
33 of public convenience and necessity for providing local  
34 telecommunications services under section 476.29 and offering  
35 local exchange services in this state shall be prohibited from



1 selling such services or a bundle of services including such  
2 services at a price that is more than two hundred percent  
3 of the lowest price that provider charges for functionally  
4 equivalent services or a bundle of services including  
5 equivalent services to another customer in this state. A  
6 telecommunications provider that offers a price to a customer  
7 in violation of this subsection shall be deemed to have  
8 engaged in predatory pricing. If the lowest price meets a bona  
9 fide price offered to a customer in the local exchange by an  
10 unrelated or unaffiliated competitor, such price shall not be  
11 used to determine a violation of this subsection.

12 2. A telecommunications provider found by a court of  
13 competent jurisdiction to have failed to materially comply with  
14 this section shall be subject to the following:

15 a. An injunction ordering compliance with this section.

16 b. For each area in which a violation occurs, a civil  
17 penalty in an amount not exceeding ten thousand dollars.

18 3. If the court finds that the noncompliance with this  
19 section has resulted in a loss or damage to a customer or  
20 customers, a person or class of persons may bring a civil  
21 action on behalf of the customer or customers seeking recovery  
22 of damages.

23 4. If the court finds that noncompliance with this  
24 section has resulted in a loss of customers to a competitive  
25 telecommunications provider, the injured telecommunications  
26 provider may bring a civil action to recover the consequential  
27 damages of economic loss suffered by the injured provider as a  
28 result of the loss of customers who changed to a noncompliant  
29 telecommunications provider while that noncompliant provider  
30 was in violation of this section.

31 Sec. 10. EFFECTIVE UPON ENACTMENT AND RETROACTIVE  
32 APPLICABILITY. This Act, being deemed of immediate importance,  
33 takes effect upon enactment and the applicable provisions of  
34 the section of this Act enacting section 477A.3, subsection  
35 6, apply retroactively to certificates of franchise authority

1 issued prior to the effective date of this Act.

2 EXPLANATION

3 This bill modifies provisions relating to franchises for the  
4 provision of cable service or video service.

5 The bill makes several changes to requirements concerning  
6 providing notice of an intent to offer cable services or  
7 video services, contents of applications to the utilities  
8 board within the department of commerce for the issuance of a  
9 certificate of franchise authority for the provision of such  
10 services, and certificate issuance procedures.

11 The bill provides that a copy of the notice which a  
12 competitive cable service provider or competitive video service  
13 provider is required to provide to each municipality with  
14 authority to grant a franchise in the service area, and to the  
15 service area's incumbent cable provider, regarding an intent  
16 to provide services in the service area must be filed with the  
17 board on the date that the notice is provided. A requirement  
18 that the board issue a certificate within 15 business days is  
19 modified in the bill to 30 business days. The bill adds to  
20 information requirements to be included in an application and  
21 affidavit for a franchise, submission of documentation that  
22 the applicant possesses sufficient managerial, technical, and  
23 financial capability to provide the cable service or video  
24 service proposed, copies of advertisements or news releases  
25 announcing the applicant's intent to provide cable service or  
26 video service in the service area intended for release if the  
27 certificate is granted, and a date certain by which the cable  
28 system or video service network will commence operation.

29 The bill provides that when issuing a certificate the board  
30 may impose conditions, restrictions, or requirements as it  
31 deems necessary or appropriate after reviewing the application  
32 and affidavit. A holder of a certificate of franchise  
33 authority will be required to provide status reports to the  
34 board every three months regarding progress toward completion  
35 of construction and commencement of operation, during the

1 interval between issuance of the certificate and the date that  
2 construction is completed and operation commences. The bill  
3 provides that if a holder of a certificate fails to complete  
4 construction and commence operation of a cable system or video  
5 service network by the date specified in the application and  
6 affidavit, or within two years from the date of issuance for  
7 certificates issued prior to the effective date of this bill,  
8 or if any conditions, restrictions, or requirements included  
9 in the certificate are not adhered to, the board may revoke  
10 the certificate. In this event, the bill provides that the  
11 previous franchise agreement in effect between an incumbent  
12 cable provider wishing to reinstate that agreement and the  
13 municipality shall be reinstated. The bill also authorizes  
14 the board to assess holders of certificates of franchise  
15 authority for the costs incurred by the board during reviews  
16 of applications and affidavits or pursuant to contested case  
17 proceedings.

18 Additionally, the bill provides that if an informal  
19 complaint process fails to resolve an issue, current provisions  
20 involving a confidential nonbinding mediation and sharing of  
21 costs between a municipality and a certificate holder shall be  
22 changed to, as an exclusive and final remedy, a confidential  
23 binding arbitration by an arbitrator selected by the parties,  
24 with the costs assessed as determined by the arbitrator.

25 The bill directs the board to compile and maintain on its  
26 internet site in an easy-to-read format a chart providing a  
27 comparison of costs and services for every provider of cable  
28 service and video service in the state.

29 The bill replaces a provision currently authorizing  
30 expansion to potential subscribers under specified  
31 circumstances by a video service provider using  
32 telecommunication facilities to provide video services  
33 with more than 500,000 access lines and servicing more than  
34 50 percent subscribers in a service area. In its place, the  
35 bill provides that both a cable service and video service

1 provider shall, beginning five years after having obtained  
2 a certificate, and every three years thereafter, increase  
3 by 20 percent the number of households in any municipality  
4 in its service area by the beginning of the next three-year  
5 period, provided that in the preceding three-year period it has  
6 provided service to at least 15 percent of the households in  
7 the municipality, until it is capable of providing service to  
8 all households in the municipality.

9 The bill also deletes a provision which permitted the board  
10 to receive a complaint from a local exchange carrier that  
11 another local exchange carrier has engaged in an activity that  
12 is inconsistent with antitrust laws and the policies which  
13 underlie them, and prescribing remedies in the event such an  
14 inconsistency was determined by the board to be occurring.  
15 The bill provides a new unlawful discrimination and predatory  
16 pricing provision regarding the establishment of rates by a  
17 cable service provider or video service provider, prohibiting  
18 subsidizing lower rate offerings with rates paid in higher rate  
19 exchange areas, and selling services at a price which exceeds  
20 200 percent of the lowest price charged for a functionally  
21 equivalent service to another customer in the state. Penalty  
22 provisions in the form of injunctive relief, a civil penalty  
23 of up to \$10,000, and consequential damages are prescribed.  
24 The bill applies the provisions regarding prices exceeding  
25 200 percent constituting predatory pricing, and prescribing  
26 penalties therefor, to local telecommunications service  
27 providers under Code section 476.29.

28 In addition, the bill directs the office of consumer  
29 advocate to conduct an assessment of the consumer impact of  
30 Code chapter 477A. The study is to include but not be limited  
31 to assessing the number of consumer complaints prompted by the  
32 chapter, and the impact of the Code chapter on competition in  
33 the provision of cable service and video service. The office  
34 is directed to provide recommendations for changes in the Code  
35 chapter's provisions which would benefit consumers by January

1 1, 2011, and each year thereafter through January 1, 2014.

2 The bill takes effect upon enactment. Provisions in the bill  
3 regarding required status reports by holders of a certificate  
4 of franchise authority, and franchise revocation for failure  
5 to complete construction and commence operation within two  
6 years for certificates issued prior to the effective date of  
7 the bill, are retroactively applicable to the holders of such  
8 certificates.